

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

**WALTER W. THIEMANN,
PLAINTIFF**

**CASE NO. C-1-00-793
(BECKWITH, J.)
(HOGAN, M.J.)**

VS.

**OHSL FINANCIAL CORP., ET AL.,
DEFENDANTS**

ORDER

This is a supplement to our previous Order of January 16, 2004. The Court has made telephonic contact with Dr. David Smith, Mr. Brinker's personal physician. Dr. Smith advised the Court that he hasn't seen Mr. Brinker since his hospitalization in November, 2003 and is not able to render an opinion on the subject of Mr. Brinker's ability to sit for a deposition. The inference the Court takes from this conversation is that one in desperate straits would have seen his doctor in the last two months. The foregoing comment is tempered by the fact that Mr. Brinker is 86 years of age and confined to a wheel chair. Therefore, the Brinker deposition can be scheduled by the parties. It shall occur in this Court's chambers and in the Court's presence. The deposition shall last no longer than two hours and shall not cover subjects upon which Mr. Brinker was previously deposed. The purpose of the deposition is to explore topics made relevant by the Plaintiffs' Amended Complaint and not to use a second deposition as a technique for impeaching testimony elicited during the first deposition. Should the Plaintiffs' desire to extend the deposition beyond two hours, the Court, after having observed the first two hours, will be in a position to evaluate Plaintiffs' need and Mr. Brinker's ability to continue. In no event will the deposition continue for more than two hours on any given day.

The Court assumes that Mr. Brinker would be driven to Court by his daughter. She is welcome to attend the deposition and arrangements can be made for the U.S. Marshall to meet her vehicle and transport Mr. Brinker to chambers so that she can park her car.

It would be helpful if either counsel could provide the Court with a copy of Mr. Brinker's previous deposition for the Court's review in advance of the deposition date. Although the deposition will take place in the Court's chambers, Plaintiff is responsible for securing a court reporter for this deposition.

January 20, 2004

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge